

CERTIFICATE OF NEED PROGRAM

December 29, 2009

DEC 31 2009

RECEIVED

Missouri Department of Health & Senior Services
Attention: Tom Piper
Certificate of Need Program
P.O. Box 570
Jefferson City, Missouri 65120

RE: Silver Oak Senior Living of Columbia
Project #44123RS

Dear Mr. Piper,

This letter is to request an extension for 6 months regarding the project #4123RS Silver Oak Senior Living of Columbia. The financial funding for the project has been secured. Our forestry crew is waiting for a break in the weather to begin their work. We would greatly appreciate your assistance in granting the request for the extension.

If you require additional information or have any questions please feel free to contact me at (405) 705-2420.

Sincerely,

Mary Yount
Silver Oak Senior Living, L.C.

Silver Oak Senior Living, LC

3720 E. 2nd Street

Edmond, OK 73034

Phone: 405-705-2420

Fax: 405-705-2401

February 20, 2010

Donna Schuessler
Health Planning Specialist
Certificate of Need Program
(573) 751-6403

CERTIFICATE OF NEED PROGRAM

FEB 22 2010

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Re: Project #4123 RS. Silver Oak Senior Living

Donna,

Here are the responses to your concerns:

1. **Provide documentation that funding for the project has been secured-**
Attached is a term sheet from Warren Construction to finance the project
2. **Provide a timeline for completion of the project -**
Attached is a construction timeline
3. **Explain why it has taken almost 2 years to secure funding for this project-**
A bond program was in place to fund both the Independent and 75 unit assisted living in September, 2007. In early 2008 with the financial collapse of Wall Street and banks, the bond market evaporated. Stephens, Inc. the investment bank, writing the bonds left the health care industry completely. Stephens, Inc. was our liaison for security funds to build the project. There has not been available any financing other than HUD which is overwhelmed with applications. Along with the financial collapse the independent living market was devastated as well. In order to make the project feasible the independents have been eliminated and a joint venture with Warren Construction, LC has been formed. Warren Construction will build the 75 unit assisted living with the same financial forecasts.
4. **Have there been any changes to the project from what was originally approved. If so, provide a detail explanation-**
Attached is a site plan showing only the Assisted Living building. Originally there was to be Independent Living along with the Assisted Living. Due to changes in the Senior Market, the Independent Living has been scratched from the project and we are only going forward with the 75 unit Assisted Living Center.
Attached is a letter from the Architect explaining some modification to the original plan.

If you have any other questions please don't hesitate to call Mike Short at (405) 705-2420.

Mike Short
Director of Operations

WARREN CONSTRUCTION, LC
707 NE 42nd
Oklahoma City, OK 73105

Proposed Term Sheet

SOCH, LC
3720 E. 2nd Street
Edmond, OK 73034

Dear Sam:

We are following up on your request for a real estate loan and in accordance therewith Warren Construction, LC, Oklahoma City, is pleased to propose the following credit accommodation to you, subject to the following terms and conditions (the "Proposal"). This proposal is based on your representation of intent to use the credit accommodations as described therein.

BASIC CREDIT TERMS

Borrower: Silver Oak Senior Living Of Columbia, LP or an affiliated special purpose entity controlled by Silver Oak Senior Living Of Columbia, LP ("Borrower")

Lender: Warren Construction, LC ("Lender")

Purpose: Funds will be used to finance the construction of a 75-unit assisted-senior living center

Facility: Construction and Real Estate Loan

Amount: Construction loan of approximately \$5,000,000.00 plus closing costs for Phase I with \$2,500,000 available for Phase II.

Term and Rate: 5 years with 5 year option 10.2% interest only.

Repayment: Interest only due monthly of 10.2% APR beginning 6 months after obtaining certificate of occupancy.

Fees:

Equity: Borrower will be required to provide operating contract to lender.

Collateral: A first title insured mortgage or deed of trust on the real estate and improvements thereon and assignment of lease contracts.

Contingencies: Signed operating lease in place by tenant.

Documentation: This proposed facility shall be evidenced by an operating agreement.

Fees and Costs: Borrower shall pay to Lender all fees and costs related to this commitment as incurred by the Lender.

Depository Accounts: Negotiable in amount but must be at bank of lenders choice.

Events of Default:

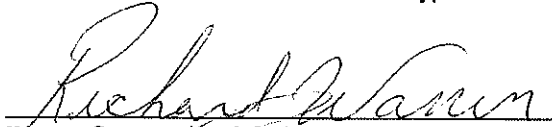
Customary, including without limitation non-payment, incorrect or misleading representations, non-compliance with covenants, bankruptcy, failure to provide required and/or requested financial information and breach of terms of Operating Documents.

Documents Required to Close:

- 1) Articles of organization if an LLC or articles of incorporation if corporate entity.
- 2) Operating agreements and by-laws.
- 3) Zoning and permits.
- 4) Survey. A survey by a licensed surveyor satisfactory to the Lender, showing all customary and relevant information pursuant to relevant professional standards and title insurer requirements, and, if requested by the Lender after staking of all building corners, the location of the improvements in relation to all setback restrictions.

Other Terms**And Conditions**

The Lender will have other terms and conditions, which are normal and customary for loans of this type.


Warren Construction, LC, Manager

2/19/10
Date


Silver Oak Senior Living Of Columbia, LP, Manager

2/19/10
Date

RELATIVE ARCHITECTURE

February 17, 2010

SOCH, LC
Sam Crosby
&
Warren Construction
Richard Warren

Re: Columbia, Missouri

Mr. Crosby & Mr. Warren

In the e-mail from Donna Schuessler, Health Planning Specialist, Certificate of Need Program, two of the questions asked, I would like to address at this time. Please forward this correspondence to Ms. Schuessler with your other materials.

Question #1: Provide a time line for the completion of the project.

The revised time line is attached as schedule 2/17/10

Question #2: Have there been any changes to the project from what was originally approved?

At the beginning of this year the International Building Code (IBC) adopted the ICC/ANSI Accessible and Bearers code to become a part of the IBC Code. This means that we have to design to both ANSI as a part of IBC and ADA because it is federal Law. We have to use the most restrictive of two on any given subject. To that end we have had to redesign all of the resident rooms to meet the more restrictive ANSI code.

If there are any further questions we will respond immediately.

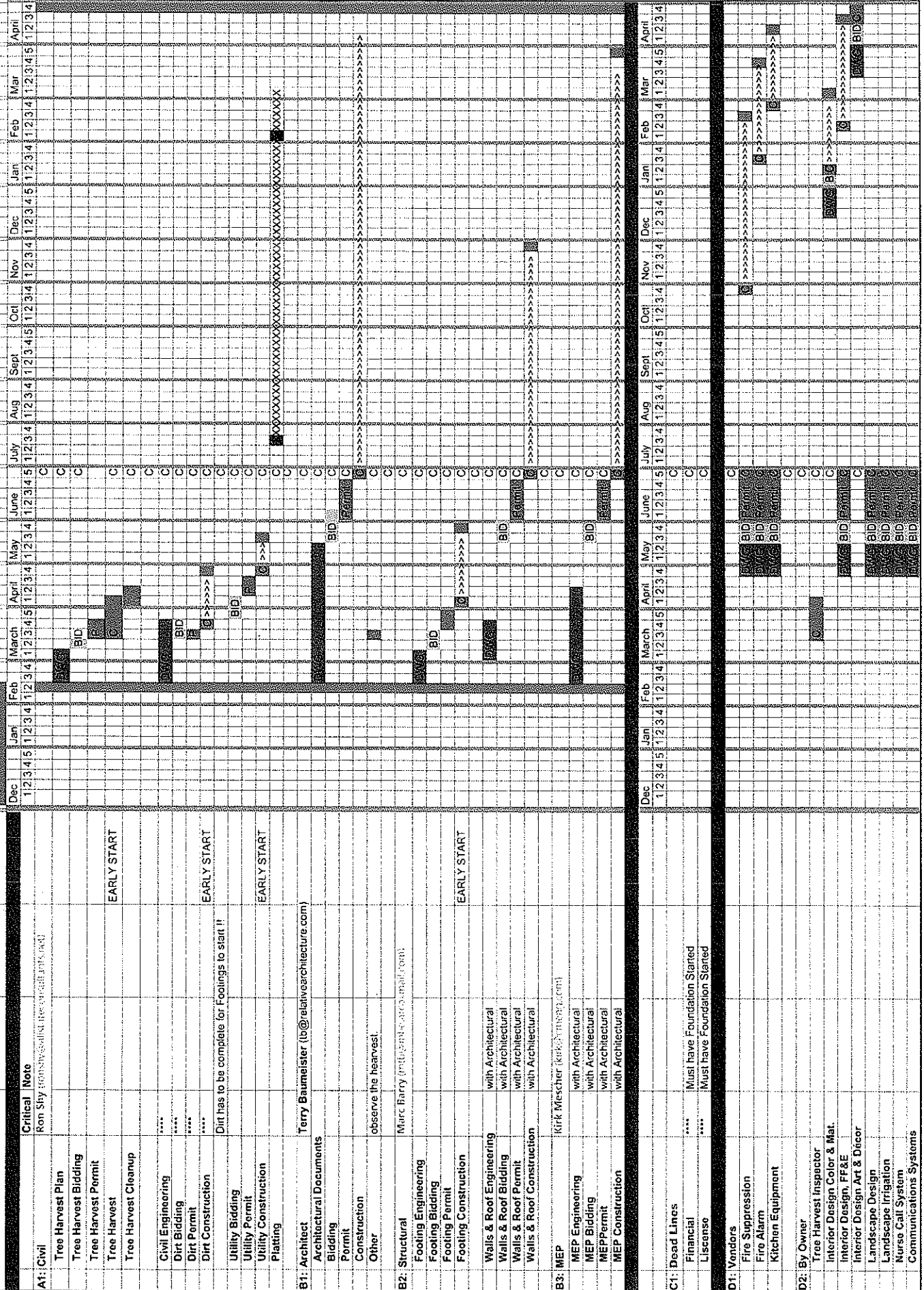
Thank you,

Terry K. Baumeister
For the Firm

Relative Architecture LLC Architects & Planners

Project Schedule : Berrywood Assisted Living Center, Columbia, Missouri

Date: 2/17/2010



[illegible]

DRAFT AIA® Document B101™ - 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the twenty first day of July in the year two thousand nine
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Future Focus Community LLC - Warren L.C.
4376 Westhampton Place Court
St. Charles, Missouri 63304

and the Architect:
(Name, legal status, address and other information)

Baumeister Gauthier L.C. - Relative Architecture LLC
3233 N. Harvey Parkway
Oklahoma City, Oklahoma 73118

for the following Project:
(Name, location and detailed description)

Berrywood Assisted Living
Columbia, Missouri

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA Standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

Project shall be a 75-unit, 52,000 square-foot assisted living facility with memory care. Building shall utilize a split-level design. Building shall include 61 assisted living resident rooms, 14 memory care resident rooms, support spaces and amenities. Tree harvesting and harvesting clean-up shall occur prior to the issuance of the building permit and commencement of construction. Any work provided by the Architect for tree harvesting shall be an additional service. The Owner shall retain the current civil engineer, Allstate Consultants for civil engineering services. This agreement is based upon utilization of previously developed concepts, designs and program items. Minor changes are acceptable, however, major changes shall be on an additional services basis.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- 1 Commencement of construction date:



- 2 Substantial Completion date:



§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation. .

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

N/A

.2 Automobile Liability

N/A

.3 Workers' Compensation

N/A

.4 Professional Liability

N/A

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once

approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and

describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests

for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	Owner	
§ 4.1.2 Multiple preliminary designs	Not Provided	
§ 4.1.3 Measured drawings	Not Provided	
§ 4.1.4 Existing facilities surveys	Not Provided	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	Not Provided	

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User Notes:

{1802918263}

§ 4.1.6	Building information modeling	Not Provided	
§ 4.1.7	Civil engineering	Owner	
§ 4.1.8	Landscape design	Owner	
§ 4.1.9	Architectural Interior Design (B252™-2007)	Not Provided	
§ 4.1.10	Value Analysis (B204™-2007)	Not Provided	
§ 4.1.11	Detailed cost estimating	Not Provided	
§ 4.1.12	On-site project representation	Not Provided	
§ 4.1.13	Conformed construction documents	Not Provided	
§ 4.1.14	As-Designed Record drawings	Not Provided	
§ 4.1.15	As-Constructed Record drawings	Not Provided	
§ 4.1.16	Post occupancy evaluation	Not Provided	
§ 4.1.17	Facility Support Services (B210™-2007)	Not Provided	
§ 4.1.18	Tenant-related services	Not Provided	
§ 4.1.19	Coordination of Owner's consultants	Not Provided	
§ 4.1.20	Telecommunications/data design	Not Provided	
§ 4.1.21	Security Evaluation and Planning (B206™-2007)	Not Provided	
§ 4.1.22	Commissioning (B211™-2007)	Not Provided	
§ 4.1.23	Extensive environmentally responsible design	Not Provided	
§ 4.1.24	LEED® Certification (B214™-2007)	Not Provided	
§ 4.1.25	Fast-track design services	Not Provided	
§ 4.1.26	Historic Preservation (B205™-2007)	Not Provided	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™-2007)	Not Provided	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- 1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- 2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- 3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- 4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- 5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- 6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- 7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- 8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 ~~Two~~ (~~2~~) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 ~~Monthly~~ (~~1~~) visits to the site by the Architect over the duration of the Project during construction
- .3 ~~One~~ (~~1~~) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 ~~One~~ (~~1~~) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within ~~Twelve~~ (~~12~~) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market:

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the

Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

☒ Arbitration pursuant to Section 8.3 of this Agreement

☐ Litigation in a court of competent jurisdiction

☐ Other (Specify)



§ 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the

interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

~~6% of the Cost of Work as defined in Article 6. Cost of Work above. The Cost of Work is estimated to be seven million five hundred thousand dollars (\$7,500,000).~~

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

~~Actual cost of direct time utilizing the hourly rate of the personnel utilized in the services, all expenses incurred on behalf of the service and all expenses and costs of all consultants.~~

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

~~Actual cost of direct time utilizing the hourly rate of the personnel utilized in the services, all expenses incurred on behalf of the service and all expenses and costs of all consultants.~~

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ~~ten~~ (~~10~~), or as otherwise stated below.

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	twenty five	percent (25	%)
Design Development Phase	twenty five	percent (25	%)
Construction Documents Phase	forty	percent (40	%)
Bidding or Negotiation Phase	five	percent (5	%)
Construction Phase	five	percent (5	%)
Total Basic Compensation	one hundred	percent (100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category**Rate**

Senior Architect	\$150/hour
Principal Architect	\$120/hour
Project Manager	\$100/hour
Architect	\$85/hour
Cadd Drafter	\$60/hour
Clerical	\$45/hour

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ~~(ten)~~ (10%) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

~~100% of the fee due at the time of termination plus 20% of the entire fee if termination is prior to completion of Construction Documents or 10% of the entire fee if termination is after completion of Construction Documents~~

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of ~~twenty-two thousand five hundred dollars~~ (\$ 22,500) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ~~(ten)~~ (10) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

~~18% per annum~~

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

- .3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

This Agreement entered into as of the day and year first written above.

OWNER

(Signature)

(Printed name and title)

ARCHITECT

(Signature)

(Printed name and title)

SLC Development Company, LLC

A Division of Scenic Living Communities, Inc.

CERTIFICATE OF NEED PROGRAM

FEB 01 2010

January 29, 2010

RECEIVED

Thomas R. Piper, Director
Certificate of Need Program
Post Office Box 570
Jefferson City, Missouri 65102

Re: #4304 – Meadow Ridge Estates Assisted Living

Dear Mr. Piper:

Enclosed please find the Periodic Progress Report in regard to the above-referenced project. For the reasons outlined below, we have not made an above-ground capital expenditure to date. Therefore, I am also requesting an extension on the above referenced project.

Due to the changes in the capital markets and restrictions that have been placed on banks, the bank that had originally given us a commitment decided that it no longer could do our loan and rescinded their commitment. We have explored several options over the last six months but none of these options have come to fruition. We spent several months examining HUD financing but decided the fees and the regulatory costs were too high, as the fees and costs would have increased the overall cost of the project by 12%.

However, I recently met with the Steve Gerrish of the Moberly Regional Office of the United States Department of Agriculture, and he indicated that this is a project that would work well with the USDA's Business and Industry program. Mr. Gerrish stated that, subject to underwriting, the local office would push for its approval. In addition, due to the Federal Stimulus program, much of the fees are being waived, which would make its costs similar to conventional financing. Greenbelt Bank and Trust of Iowa Falls, Iowa has agreed to do the loan in conjunction with the USDA. They have completed several USDA loans in the last year and are familiar with process. They have viewed the preliminary financials and based on this they have issued a conditional loan commitment.

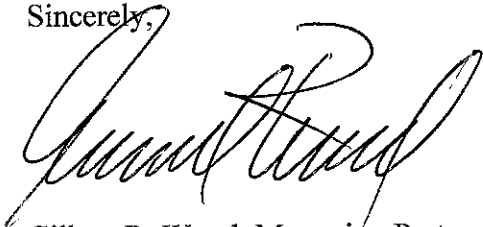
In addition, the City of Moberly has agreed to give the project a Chapter 353 tax rebate in conjunction with designating the project a Community Improvement District, thereby giving the project a note of up to \$300,000 for qualified improvements. We are waiting on approval of the extension requested by this letter before proceeding with the process of finalizing the Chapter 353/Community Improvement District documentation, as there are significant legal fees associated with this incentive.

As with any governmental agency, the application and approval process for the loan and the City incentives could take several months to complete. While our goal is to get this done as quickly as possible and we hope to be able to make an above-ground capital expenditure within the next six months, we may be forced to request another extension.

In addition to the Periodic Progress Report, I have also enclosed a conditional commitment letter from Greenbelt, and financial projections for the bank.

Thank you for your cooperation in this matter and please feel free to call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Gilbert R. Wood", written in a cursive style.

Gilbert R. Wood, Managing Partner
SLC Development Company, LLC

GRW/kw

CERTIFICATE OF NEED PROGRAM



Certificate of Need Program

FEB 01 2010

PERIODIC PROGRESS REPORT RECEIVED

Type of Progress Report:

- ☒ Intermediate
☐ Final

All applicants granted a Certificate of Need (CON) by the Missouri Health Facilities Review Committee are required to submit periodic progress reports until such time as the project is complete (§197.315 (8) RSMo). These reports **must** be filed with the CON Program staff after the end of **each six (6) month reporting period** following the issuance of a CON.

Name of Project Independent Living of Moberly, LLC	Report Period 9/2/09 to 2/2/10
Address 521 Meadow Ridge Lane, Moberly, Missouri 65270	Project Number 4304
Project Description 40 Bed Assisted Living. New Construction.	Date CON Issued 2/2/09
	Approved Cost \$3,775,590

- 02/18/10*
- ☐ Yes **1. Have capital expenditures been incurred for the proposed construction and/or**
☒ No **medical equipment?**

_____ Date construction started or equipment purchased.
 Provide copy of AIA contract and/or purchase order.

- ☒ Yes ***2. Are the expenditures for this reporting period/project-to-date included?**
☐ No

0 _____ % of the total approved project amount that has been expended to date.

- ☒ Yes **3. Are the projected final costs within the limits approved?**
☐ No

If "No" and costs are above 10% of approved amount, then submit a cost over-run application
 \$ _____ Estimated final project cost

- ☐ Yes **4. Are there any changes in the services or programs as approved in the application?**
☒ No

If "Yes" explain in detail and provide replacement pages for the approved application.

- ☐ Yes **5. Has the project contact person changed?**
☒ No

If "Yes," enclose a new Contact Person Correction Form (MO 580-1870).

***6. Construction or installation is 0 % complete.**

If Items 2 and 6 are both 100% complete, signify this as the **Final Report and submit documentation of final costs.*

Description of progress to date. Clearly explain expenditures, delays, changes in project progress, or lack of progress, of the approved project (use additional pages as needed):

Please see the attached letter for an explanation of delays. Please note that the Gib Wood's address has changed to 11775 W. 112th Street, Suite 200, Overland Park, Kansas 66210.



Certificate of Need Program

PERIODIC PROGRESS REPORT

Project Budget/Expenditures		Report Period: <u>2/2/09</u> to <u>8/2/09</u>	
Description	Application	This Period	Project-to-date
1. General Construction Costs	\$2,900,000	0	0
2. Site Work	0	0	0
3. Subtotal Construction Costs	\$2,900,000	\$0	\$0
4. Architectural/Engineering Fees	\$175,000	0	0
5. Fixed Equipment	96,000	0	0
6. Movable Equipment	0	0	0
7. Land Acquisition	34,590	0	34,590
8. Consultants' Fees/Legal Fees	60,000	0	20,645
9. Interest During Construction	90,000	0	0
10. Other Costs	420,000	0	3,799
11. Subtotal Non-construction Costs	\$875,590	\$0	\$59,034
12. TOTAL Project Development Costs	\$3,775,590	\$0	\$59,034
Square footage: New Construction	30,203	0	0
Renovated Space	0	0	0
Total Project	30,203	0	0
Costs per square foot: New Construction	96.02	0	0
Renovated Space	0	0	0
Name of Contact Person Gib Wood		Title Managing Partner	
Telephone Number 913/599-5705	Fax Number 913/890-4789	E-mail Address gibw@slcif.com	



www.greenbeltbank.com

1-800-648-2544

January 29, 2010

Mr. Gilbert R. Wood, Manager
SLC Development Company, LLC
13830 Santa Fe Trail Drive – Ste. 100
Lenexa, KS 66215

Re: Meadow Ridge Estates in Moberly, Missouri

Dear Mr. Wood,

Based on our preliminary review of your proposed project, we have conditionally approved USDA financing in the amount of \$3,000,000. The bank's relationship with you and your partners has been very successful over the years and we look forward to working with you on this proposed project.

This commitment is subject to all city and state regulations and is further subject to our ability to secure loan participants in the financing.

If you have further questions, please contact me.

Sincerely,

Steven L. Afdahl
President

Start-up Costs

[illegible]

Start-up Profit and Loss Projections

Month	Yr 1	Yr 2	1	2	3	4	5	6	7	8	9	10	11	12
Revenue														
Units Rented - ILF			42	42	42	42	42	42	42	42	42	42	42	42
Units Rented - ALF			8	9	11	12	14	15	16	18	19	21	22	23
Rent - Units			75,860	79,271	82,682	86,093	89,504	92,915	96,326	99,737	103,577	106,988	110,399	113,810
Rent - Garages			975	975	975	975	975	975	975	975	975	975	975	975
2nd Occupant - ILF			1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100
2nd Occupant - ALF			2,304	2,304	2,304	2,304	3,456	3,456	3,456	4,608	4,608	4,608	4,608	5,760
Level 1			990	1,162	1,334	1,506	1,678	1,849	2,021	2,193	2,365	2,537	2,709	2,881
Level 2			750	880	1,010	1,141	1,271	1,401	1,531	1,661	1,792	1,922	2,052	2,182
Level 3			200	235	269	304	339	374	408	443	478	513	547	582
Total Revenue			82,179	85,927	89,675	93,423	98,322	102,070	105,818	110,718	114,894	118,642	122,390	127,290
Expenses														
Wages and Salary			29,870	29,870	29,870	29,870	29,870	33,602	33,602	33,602	38,082	38,082	44,802	44,802
Benefits/Payroll Tax			4,480	4,480	4,480	4,480	4,480	5,040	5,040	5,040	5,712	5,712	6,720	6,720
Advertising			1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	500
Insurance - Property			4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000
Insurance - Workmans			504	504	504	504	504	568	568	568	643	643	757	757
Legal and Accounting			100	100	100	100	100	100	100	100	100	100	100	100
Repairs and maintenance - bldg			800	800	800	800	800	800	800	800	800	800	800	800
Repairs and maintenance - Equip			450	450	450	450	450	450	450	450	450	450	450	450
Supplies			2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
Telephone			500	500	500	500	500	500	500	500	500	500	500	500
Groundskeeping			300	300	300	300	300	300	300	300	300	300	300	300
Utilities			5,250	5,313	5,375	5,438	5,500	5,563	5,625	5,688	5,764	5,827	5,889	5,952
Food Costs			3,884	4,115	4,345	4,576	4,806	5,037	5,267	5,498	5,748	5,978	6,209	6,439
Management Fee			4,109	4,296	4,484	4,671	4,916	5,104	5,291	5,536	5,745	5,932	6,119	6,364
Social			400	400	400	400	400	400	400	400	400	400	400	400
Property Taxes			5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Misc.			500	500	500	500	500	500	500	500	500	500	500	500
Reserves			2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
Total Operating Expense			65,148	65,628	66,109	66,589	67,127	71,962	72,443	72,981	78,744	79,225	87,547	881,087
Gross Profit			17,031	20,299	23,566	26,834	31,195	30,108	33,375	37,737	36,150	39,417	34,843	39,705
ILF Mortgage Payment			(21,877)	(21,877)	(21,877)	(21,877)	(21,877)	(21,877)	(21,877)	(21,877)	(21,877)	(21,877)	(21,877)	(21,877)
ALF Mortgage Payment			(14,026)	(14,026)	(14,026)	(14,026)	(14,026)	(14,026)	(14,026)	(14,026)	(14,026)	(14,026)	(14,026)	(14,026)
Pre-tax Profit			(18,872)	(15,605)	(12,337)	(9,070)	(4,708)	(5,795)	(2,528)	1,834	246	3,514	(1,061)	(60,551)

Start-up Profit and Loss Projections

Month	Yr 3	1	2	3	4	5	6
Revenue							
Units Rented - ILF		42	42	42	42	42	42
Units Rented - ALF		25	26	27	27	29	30
Rent - Units		117,221	120,632	124,043	124,043	127,454	130,865
Rent - Garages		975	975	975	975	975	975
2nd Occupant - ILF		1,100	1,100	1,100	1,100	1,100	1,100
2nd Occupant - ALF		5,760	5,760	5,760	5,760	6,912	6,912
Level 1		3,053	3,224	3,396	3,396	3,568	3,740
Level 2		2,313	2,443	2,573	2,573	2,703	2,833
Level 3		617	651	686	686	721	756
Total Revenue		131,038	134,785	138,533	138,533	143,433	147,181
Expenses							
Wages and Salary		44,802	44,802	44,802	44,802	44,802	44,802
Benefits/Payroll Tax		6,720	6,720	6,720	6,720	6,720	6,720
Advertising		500	500	500	500	500	500
Insurance - Property		4,000	4,000	4,000	4,000	4,000	4,000
Insurance - Workmans		757	757	757	757	757	757
Legal and Accounting		100	100	100	100	100	100
Repairs and maintenance - bldg		800	800	800	800	800	800
Repairs and maintenance - Equip		450	450	450	450	450	450
Supplies		2,000	2,000	2,000	2,000	2,000	2,000
Telephone		500	500	500	500	500	500
Groundskeeping		300	300	300	300	300	300
Utilities		6,014	6,077	6,139	6,139	6,202	6,264
Food Costs		6,670	6,900	7,131	7,131	7,362	7,592
Management Fee		6,552	6,739	6,927	6,927	7,172	7,359
Social		400	400	400	400	400	400
Property Taxes		5,000	5,000	5,000	5,000	5,000	5,000
Misc.		500	500	500	500	500	500
Reserves		2,000	2,000	2,000	2,000	2,000	2,000
Total Operating Expense		88,066	88,546	89,026	89,026	89,564	90,045
Gross Profit		42,972	46,239	49,507	49,507	53,869	57,136
ILF Mortgage Payment		(21,877)	(21,877)	(21,877)	(21,877)	(21,877)	(21,877)
ALF Mortgage Payment		(18,075)	(18,075)	(18,075)	(18,075)	(18,075)	(18,075)
Pre-tax Profit		3,020	6,288	9,555	9,555	13,917	17,185



HUSCHBLACKWELL
SANDERS LLP

CERTIFICATE OF NEED PROGRAM

FEB 03 2010

RECEIVED

February 2, 2010

Thomas D. Vaughn
Attorney

235 East High Street, P.O. Box 1251
Jefferson City, MO 65102-1251
573.761.1108
fax: 573.634.7854
tom.vaughn@huschblackwell.com

VIA EMAIL

Mr. Thomas R. Piper
Missouri Certificate of Need Program
3418 Knipp Drive, Suite F
Jefferson City, MO 65109

Re: **Green Park Leasing Co., LLC d/b/a Green Park Nursing Home**
Project # 4297 NS
Add 28 SNF Beds

Dear Mr. Piper:

Enclosed is a Periodic Progress Report for the time period August 2, 2009 through February 2, 2010.

The attached Periodic Progress Report includes expenses in excess of the amounts included in the original budget for this project.

This letter is an application for a cost overrun for this project.

Attached is a proposed project budget in the form of Amended Exhibit 3 of the application for this project. The attached Amended Exhibit 3 shows the final proposed project budget amounts. These amounts are substantially in excess of the original budgeted amounts included in the project as approved by Missouri Health Facilities Review Committee ("MHFRC") on February 2, 2009.

The main reason for incurring expenses in excess of the amounts included in the budget is that the plans for each component of the project were changed. When the project was originally conceived, the applicant planned to incur the minimal amount in order to make the changes planned. After the project was approved by MHFRC, the applicant decided to upgrade the quality of all changes being made to the building. Also, the applicant has tried to make the rehabilitation facility less institutional. As a result, each component of the project underwent a significant increase in cost.

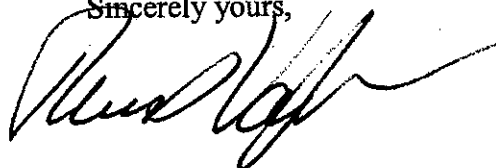
On behalf of Green Park Nursing Home, we request that Missouri Health Facilities Review Committee grant its request to increase the amount of its budget from the original approved amount of \$483,616 to the new amount of \$2,927,832.

\$1928

In the next few days, we will send you a check in the amount of \$2,445 which represents the increase in the amount of the application fee based upon the increase in the amount of the budget for this project. The difference between the approved budget and the proposed new budget is \$2,444,216. One tenth of one percent of this amount, rounded up to the next dollar is \$2,445.

Please let me know if you have any questions about this matter.

Sincerely yours,



THOMAS D. VAUGHN

TDV:tw
Enclosures



Certificate of Need Program

PERIODIC PROGRESS REPORT

Type of Progress Report:

- ☒ Intermediate
☐ Final

All applicants granted a Certificate of Need (CON) by the Missouri Health Facilities Review Committee are required to submit periodic progress reports until such time as the project is complete (8197.315 (8) RSMo). These reports **must** be filed with the CON Program staff after the end of **each six (6) month reporting period** following the issuance of a CON.

Name of Project Green Park Nursing Home	Report Period 8-2-09 - 2/2/10
Address 9350 Green Park Road St. Louis, MO 63123	Project Number 4297 NS
	Date CON Issued 2-2-09
Project Description Add 28 SNF Beds	Approved Cost \$483,616

- 52/18/10 *[Signature]*
☒ Yes 1. Have capital expenditures been incurred for the proposed construction and/or medical equipment?
☐ No

July 20, 2009 Date construction started or equipment purchased.
Provide copy of AIA contract and/or purchase order.

- ☒ Yes *2. Are the expenditures for this reporting period/project-to-date included?
☐ No

_____ % of the total approved project amount that has been expended to date.

- ☐ Yes 3. Are the projected final costs within the limits approved?
☒ No If "No" and costs are above 10% of approved amount, then submit a cost over-run application
\$ _____ Estimated final project cost

See separate cost overrun application.

- ☐ Yes 4. Are there any changes in the services or programs as approved in the application?
☒ No If "Yes" explain in detail and provide replacement pages for the approved application.

- ☐ Yes 5. Has the project contact person changed?
☒ No If "Yes," enclose a new Contact Person Correction Form (MO 580-1870).

*6. Construction or installation is 27 % complete.

*If Items 2 and 6 are both 100% complete, signify this as the **Final Report** and submit documentation of final costs.

Description of progress to date. Clearly explain expenditures, delays, changes in project progress, or lack of progress, of the approved project (use additional pages as needed):

The 28 skilled nursing facility beds have been added to the building which was previously Green Park Resident Center. Remodeling work is in progress now. The scope of the remodeling work has expanded beyond the original plans.



Certificate of Need Program

PERIODIC PROGRESS REPORT

Project Budget / Expenditures		Report Period: <u>8/2/09</u> to <u>2/2/10</u>	
Description	Application	This Period	Project-to-date
1. General Construction Costs	\$431,800	\$295,347	\$534,630
2. Renovation Costs	0	0	0
3. Subtotal Construction Costs	\$431,800	\$295,347	\$534,630
4. Architectural/Engineering Fees	\$51,816	0	0
5. Other Equipment (not in construction contract)	0	153,575	260,630
6. Major Medical Equipment	0	0	0
7. Land Acquisition Costs	0	0	0
8. Consultants' Fees/Legal Fees	0	0	0
9. Interest During Construction	0	0	0
10. Other Costs	0	0	0
11. Subtotal Non-construction Costs	\$51,816	\$153,575	\$260,630
12. TOTAL Project Development Costs	\$483,616	\$448,922	\$795,260
Square footage: New Construction	0	0	0
Renovation	7,355	0	0
Total Project	7,355	0	0
Costs per square foot: New Construction	0	0	0
Renovation	65.75	0	0
Name of Contact Person Thomas D. Vaughn		Title Attorney	
Telephone Number 573-635-9118	Fax Number 573-634-7854	E-mail Address tom.vaughn@huschblackwell.com	

Certificate of Need Program

PROPOSED PROJECT BUDGET**Description****Dollars****COSTS:***

1. New Construction Costs ***	\$0
2. Renovation Costs ***	2,238,917
3. Subtotal Construction Costs (#1 plus #2)	<u>\$2,238,917</u>
4. Architectural/Engineering Fees	\$300,000
5. Other Equipment (not in construction contract)	388,915
6. Major Medical Equipment	0
7. Land Acquisition Costs ***	0
8. Consultants' Fees/Legal Fees ***	0
9. Interest During Construction (net of interest earned) ***	0
10. Other Costs ****	0
11. Subtotal Non-Construction Costs (sum of #4 through #10)	<u>\$688,915</u>
12. Total Project Development Costs (#3 plus #11)	<u>\$2,927,832</u> **

FINANCING:

13. Unrestricted Funds	\$0
14. Bonds	0
15. Loans	2,927,832
16. Other Methods (specify)	0
17. Total Project Financing (sum of #13 through #16)	<u>\$2,927,832</u> **

18. New Construction Total Square Footage	0
19. New Construction Costs Per Square Foot *****	0
20. Renovated Space Total Square Footage	7,355
21. Renovated Space Costs Per Square Foot *****	\$304.40

* Attach additional page(s) to provide details of how each line item was determined, including all methods and assumptions used.

** These amounts should be the same.

*** Capitalizable items to be recognized as capital expenditures after project completion.

**** Include as Other Costs the following: other costs of financing; the value of existing lands, buildings and equipment not previously used for health care services, such as a renovated house converted to residential care, determined by original cost, fair market value, or appraised value; or the fair market value of any leased equipment or building, or the cost of beds to be purchased.

***** Divide new construction costs by total new construction square footage.

***** Divide renovation costs by total renovation square footage.

Green Park (Phase 1) - Summary

Item Description	Category	Location	Project Tracking Number	Amount
-Patch E.I.F.S column bases at entrance	Building Exteriors	Nursing Home	085-22028-0004	500.00
-Fire suppression	Fire Suppression	Nursing Home	085-22028-0002	2,500.00
-Fire suppression	Fire Suppression	Residence Center	085-22028-0013	2,500.00
	Sub-total Fire Suppression			5,000.00
-Jetting of sanitary lines	First Yr RR	Nursing Home	085-22028-0011	2,500.00
-Jetting of sanitary lines	First Yr RR	Residence Center	085-22028-0016	2,500.00
	Sub-total First Yr RR			5,000.00
-Nursing Home-Shower room upgrades	Owners Repairs	Nursing Home	085-22028-0006	7,000.00
-Downspout connections	Owners Repairs	Nursing Home	085-22028-0008	500.00
Resident Rooms:				
FF&E already purchased + A/E & owner fees (estimate)	Owners Repairs	Nursing Home	085-22028-0010	300,000.00
Flooring				105,600.00
Laminate Headboard				24,000.00
Signage				6,600.00
Ceiling/Dresser Lights				29,304.00
Resident Bathroom upgrades				60,800.00
-Resident Center-Room 88 & 90 Water Damage	Owners Repairs	Residence Center	085-22028-0017	2,500.00
-Resident Center-Unit preparations for 49 beds-Overbed Lights	Owners Repairs	Residence Center	085-22028-0018	14,700.00
-Resident Center-Unit preparations for 49 beds-Nurse Call	Owners Repairs	Residence Center	085-22028-0019	12,250.00
-Resident Center-Unit preparations for 49 beds-finish upgrades (42) rooms: paint/flooring/ceil Adjustment	Owners Repairs	Residence Center	085-22028-0020	151,200.00
				10,907.00
Town Center/Galleria & PT/OT (includes Generator)				
Flooring	Owners Repairs	Residence Center	085-22028-0021	988,366.00
Change Orders (Lewis Contract)				125,000.00
CO#1- Approved				(2,310.00)
CO #2 (100,000 estimate - bistro counter, generator/veritas/etc.)				100,000.00
Dining Room Renovation				
Corridor Improvements				150,000.00
				130,000.00
-Upgrade door hardware for compliance				
	Owners Repairs	Residence Center	085-22028-0025	22,500.00
	Sub-total Owners Repairs			2,238,917.00

Detail Sheet
Line 5 – Other Equipment

FF&E - miscellaneous	250,000.
Lounge	10,584.
Office	40,021.
Café furniture	20,000.
Miscellaneous art	10,000.
furniture and trash cans	21,810.
PT/OT	36,500.
Total:	388,915.



Thomas D. Vaughn
Attorney

235 East High Street, P.O. Box 1251
Jefferson City, MO 65102-1251
573.761.1108
fax: 573.634.7854
tom.vaughn@huschblackwell.com

February 22, 2010

CERTIFICATE OF NEED PROGRAM

FEB 22 2010 *VIA EMAIL*

RECEIVED

Ms. Donna J. Schuessler
Health Planning Specialist
Missouri Health Facilities Review Committee
Certificate of Need Program
P. O. Box 570
Jefferson City, MO 65102

Re: **Green Park Nursing Home, CON Project #4297 NS, Cost Overrun
Application**

Dear Ms. Schuessler:

This letter is in response to your email messages and our telephone conversation of February 19, 2010.

In our email messages and our telephone conversation, you requested additional information about the cost overrun application for this project. Please note the following additional information:

1. **More Details About Reason For Cost Overrun.** The applicant previously operated a 160-bed skilled nursing facility ("SNF") known as Green Park Nursing Home and a 51-bed residential care facility ("RCF") known as Green Park Resident Center in two separate and connected buildings on a single parcel of ground. One building was licensed exclusively for SNF services. The second building was previously licensed for 51 RCF beds and 39 SNF beds. All of the work in the project is taking place in the former Green Park Resident Center building (the "Resident Center").

In this project, the applicant proposed to close the 51 RCF beds in the Resident Center and replace them with 28 SNF beds, add rehabilitation space, improve the common areas and perform related remodeling work.

The concept of the project was to provide short term rehabilitation services primarily for patients who might otherwise be uncomfortable being in a long term care facility and who would return home following rehabilitation.

When the applicant went further into the planning marketing analysis to develop the final design, the applicant decided that the project would be competing primarily with facilities designed on a hospital model rather than long term care facilities. This marketing observation led the applicant to improve each of the components of the original project to make the clients more comfortable and to remodel most of the Resident Center.

As a result of this decision, some of the components were greatly improved in scope which caused the expenditures to be greater. For example, the amount spent for furniture, fixtures and equipment for the project was increased to \$388,915. The project originally included a common area new entrance called the Towne Center. This was originally planned at a cost of \$87,500. This area was greatly improved so that it ended up with a cost closer to \$350,000.

The Towne Center now includes a bistro/pub area and a Wii therapy area where Wii games are available for residents to play.

In addition to items which experienced an increase in cost, there were also some items which were not in the original planning but were added in order to provide an overall improvement to the Resident Center. The applicant decided to renovate the entire Resident Center, with the exception of the special needs section of approximately 13,566 square feet.

The original plan did not include renovation of the main dining room in the Resident Center. This was added at a cost of \$150,000. The dining room remodeling includes a redesign to make it look more like a restaurant. This was another part of the overall effort to make the Resident Center appeal more to short term therapy patients.

Also, the original plan did not include remodeling of corridors. Corridor remodeling was added at a cost of \$130,000. The original plan called for remodeling of just the rooms where the 28 SNF beds were being added. This was expanded to include remodeling of all resident rooms in the Resident Center, except those in the special needs center.

2. **Square Feet of Space.** The original project included 7,355 square feet of remodeling. As a result of the addition of other spaces for remodeling, the number of square feet was greatly increased. The final number of square feet is 40,960. In the proposed **Amended Exhibit 3**, the number of square feet remodeled was incorrectly left at 7,355 (the same amount shown in the original Exhibit 3, proposed project budget). This resulted in a renovated cost per square foot of \$304.40. The corrected cost per square foot of renovated space should be \$2,238,917 divided by 40,960 square feet or \$54.66. This actually brings the cost of remodeling per square foot down from the original cost per square foot of \$65.78. This resulted from remodeling in some areas being intense and more or less complete (such as in the resident rooms), but in other areas the remodeling was less intensive (such as the dining room).

The sizes of the areas being remodeled are:

<u>Description</u>	<u>Square Feet</u>
1. Resident rooms (44 units)	14,681
2. Rehabilitation, physical therapy and occupational Therapy (excluding central bathing)	2,162
3. Spa salon and dispensary	535
4. Corridors	6,600
5. Dining room	2,153
6. Administrative and other areas	<u>14,829</u>
Total:	<u>40,960</u>

Recap:

Total area of Resident Center	54,526
Total area remodeled	40,960
Area not remodeled	13,566

3. **Financing.** Attached is the following information on the subject of financing:

a) A Credit Agreement dated November 12, 2009 between LaSalle RE Assets, LLC (the owner of the project) and Fifth Third Bank. Under the Credit Agreement, Fifth Third Bank agreed to loan the owner up to \$1,500,000.

b) This is an Escrow Agreement between LaSalle RE Assets, LLC and Gershman Investment Corp, the U.S. Department of Housing and Urban Development ("HUD") lender for this project. This project is funded by a combination of a HUD loan and the Fifth Third Bank loan described above.

In paragraph 1 of the Escrow Agreement, it states that Gershman Investment Corp. acknowledges receipt of an escrow fund in the amount shown on Exhibit A. Exhibit A refers to the amount shown on Exhibit B. Exhibit B shows that there is an escrow in the amount of \$1,532,037 plus 20,959 for a total of \$1,552,996.

This amount along with the maximum amount of the loan under the Credit Agreement provides a source of financing for this project of \$1,500,000 plus \$1,552,996 or a total of \$3,052,996, or well in excess of the amount of the proposed **Amended Exhibit 3**, the proposed Project Budget.

Please let me know if you need any additional information.

Sincerely yours,



THOMAS D. VAUGHN

TDV:tw
Enclosures

CREDIT AGREEMENT

This Credit Agreement (the "Agreement") is entered into as of November 12, 2009 (the "Effective Date"), by and between LASALLE RE ASSETS, LLC, a Delaware limited liability company with an address at 4700 Ashwood Drive, Suite 200, Cincinnati, Ohio 45241 (the "Borrower"); and FIFTH THIRD BANK, an Ohio banking corporation, located at 110 N. Main Street, Dayton, Ohio 45402 ("Bank").

Section 1. Definitions.

Certain capitalized terms have the meanings set forth on Exhibit 1 hereto or in the Security Agreements. All financial terms used in this Agreement but not defined on Exhibit 1 have the meanings given to them by GAAP. All terms defined in the UCC and used, and not otherwise defined herein, shall have the meanings ascribed thereto in the UCC.

Section 2. Draw Loans.

2.1 Draw Loans. (a) Subject to the term and conditions hereinafter set forth, Bank hereby extends to Borrower a draw loan facility in the aggregate amount of up to One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the "Draw Loan"). Borrower's obligation to repay the Draw Loan will be evidenced by its promissory note (the "Draw Note") in form satisfactory to Bank.

(b) The Borrower may request advances under the Draw Loan commencing on the Effective Date through and including October 30, 2010. Borrower may prepay the principal balance of the Draw Note in whole or part at any time. Any amounts repaid under the Draw Note may not be reborrowed.

(c) The Draw Note will bear interest as set forth in the Draw Note.

(d) On October 31, 2010, the entire outstanding principal balance together with all accrued and unpaid interest due and owing under the Draw Note shall be due and payable in its entirety.

2.2 Time of Payment. All payments of principal and interest made by Borrower shall be made no later than 2:00 P.M., on the Business Day such payments are due. All amounts paid after such time will be credited on the following date.

2.3 Costs. Borrower will pay to Bank its fees, costs and expenses (including, without limitation, reasonable attorneys' fees, other professionals' fees, appraisal fees, environmental assessment fees (including Phase I and Phase II assessments), expert fees, court costs, litigation and other expenses (collectively, "Costs") incurred or paid by Bank in connection with negotiating, documenting, administering and enforcing the Loans and the Loan Documents, and the defense, preservation and protection of Bank's rights and remedies thereunder, including without limitation, its security interest in the Collateral or any other property pledged to secure the Loans, whether incurred in bankruptcy, insolvency, foreclosure or other litigation or proceedings or otherwise. The Costs will be due and payable upon demand by Bank. If Borrower fails to pay the Costs when upon such demand, Bank is entitled to disburse such sums as an advance under the Draw Loan. Thereafter, the Costs will bear interest from the date incurred or disbursed at the highest rate set forth in the Note. This provision will survive the termination of this Agreement and/or the repayment of any amounts due or the performance of any Obligation.

2.4 Fees.

(a) Note Processing Fee: On the Effective Date, Borrower will pay to Bank, a note processing fee (the "Note Processing Fee") in the amount of \$7,500.00.

Section 3. Representations And Warranties. Borrower hereby warrants and represents to Bank the following:

3.1 Organization and Qualification. Borrower is duly organized, validly existing and in good standing under the laws of its state of organization, has the power and authority to carry on its business and to enter into and perform this Agreement and the other Loan Documents to which it is a party, and is qualified and licensed to do business in each jurisdiction in which such qualification or licensing is required. All information provided to Bank with respect to Borrower and its operations is true and correct in all material respects.

3.2 Due Authorization. The execution, delivery and performance by Borrower of this Agreement and the other Loan Documents to which it is a party have been duly authorized by all necessary action, and will not (a) contravene the organizational documents of Borrower, (b) violate any agreement or instrument by which Borrower is bound or any law or governmental rule or order binding on Borrower or (c) result in the creation of a Lien on any assets of Borrower except any Lien granted to Bank. Borrower has duly executed and delivered this Agreement and the other Loan Documents to which it is a party, and such Loan Documents are valid and binding obligations of Borrower, enforceable according to their respective terms, except as limited by equitable principles and by bankruptcy, insolvency or similar laws affecting the rights of creditors generally. Other than the filings contemplated by the Loan Documents, no notice to or consent by any governmental body is needed in connection with this transaction.

3.3 Litigation. There are no suits, arbitrations, investigations, claims, inquiries, or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower, and no proceedings before any governmental body are pending or, to the knowledge of Borrower, or threatened against Borrower.

3.4 Margin Stock. No part of the Loans will be used to purchase or carry, or to reduce or retire or refinance any credit incurred to purchase or carry, any margin stock (within the meaning of Regulations U and X of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying any margin stock. If requested by Bank, Borrower will furnish to Bank statements in conformity with the requirements of Federal Reserve Form U-1.

3.5 Business. Borrower is not a party to or subject to any agreement or restriction which in the opinion of its management is so unusual or burdensome that it might have a Material Adverse Effect.

3.6 Licenses, etc. Borrower owns and possesses the right to use all licenses, permits, franchises, governmental authorizations, patents, trademarks, copyrights or other rights necessary for the ownership of its properties and conduct of its business as now conducted, or as presently contemplated to be conducted (collectively, the "Intellectual Property Rights"), and all such licenses and authorizations are in full force and effect. To the knowledge of Borrower, such licenses, patents, copyrights, trademarks, and trade names do not conflict with the rights of any other person or entity. All of the foregoing are in full force and effect and none of the foregoing are in known conflict with the rights of others.

3.7 Laws and Taxes. Borrower is in compliance with all laws, regulations, rulings, orders, injunctions, decrees, conditions or other requirements applicable to or imposed upon it by any law or by any governmental authority, court or agency. Borrower has filed all required tax returns and reports that are now required to be filed by it in connection with any federal, state and local tax, duty or charge levied, assessed or imposed upon it or its assets, including unemployment, social security, and real estate taxes. Borrower has paid all taxes which are now due and payable. No taxing authority has asserted or assessed any additional tax liabilities against Borrower which are outstanding on the Effective Date, except those being contested in good faith for which adequate reserves have been established, and Borrower has not filed for any extension of time for the payment of any tax or the filing of any tax return or report.

3.8 Financial Condition. All financial information relating to Borrower which has been or may hereafter be delivered by Borrower or on its behalf to Bank is true and correct and Borrower's financial statements have been prepared in accordance with GAAP. Borrower has no material obligations or liabilities of any kind not disclosed in that financial information, and there has been no material adverse change in the financial condition of Borrower nor has Borrower suffered any damage, destruction or loss which has adversely affected its business or assets since the submission of the most recent financial information to Bank.

3.9 Title. Borrower has good and marketable title to the assets reflected on the most recent balance sheets submitted to Bank, free and clear from all liens and encumbrances of any kind, except for: (a) liens and encumbrances, if any, reflected or noted on such balance sheet or notes thereto, (b) assets disposed of in the ordinary course of business, and (c) Permitted Liens.

3.10 Defaults. Borrower is in compliance with all material agreements applicable to it and there does not now exist any default or violation by Borrower of or under any of the terms, conditions or obligations of (a) its organizational documents or (b) any indenture, mortgage, deed of trust, franchise, permit, contract, agreement or other instrument to which it is a party or by which it is bound.

3.11 Environmental Laws. (a) Borrower has obtained all permits, licenses and other authorizations or approvals which are required under Environmental Laws and Borrower is in compliance in all material respects with all terms and conditions of the required permits, licenses, authorizations and approvals, and is also in compliance in all material respects with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws.

(b) Borrower is not aware of, and has not received notice of, any past, present or future events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent compliance or continued compliance by Borrower, in any material respect, with Environmental Laws, or may give rise to any material common law or legal liability, or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, study or investigation, based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling or the emission, discharge, release or threatened release into the environment, of any pollutant, contaminant, chemical, or industrial, toxic or hazardous substance or waste.

(c) There is no civil, criminal or administrative action, suit, demand, claim, hearing, notice or demand letter, notice of violation, investigation or proceeding pending or, to the knowledge of Borrower, threatened against Borrower relating in any way to Environmental Laws.

3.12 Subsidiaries and Partnerships. Except as disclosed to Bank, Borrower has no subsidiaries and are not a party to any partnership agreement or joint venture agreement.

3.13 ERISA. Borrower and all individuals or entities that along with them would be treated as a single employer under ERISA or the Internal Revenue Code of 1986, as amended (an "ERISA Affiliate"), are in compliance with all of their obligations to contribute to any "employee benefit plan" as that term is defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, and any regulations promulgated thereunder from time to time ("ERISA"). Borrower, and each of its ERISA Affiliates are in full compliance with ERISA, and there exists no event described in Section 4043(b) thereof ("Reportable Event"). There are no pending or, to the knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any governmental authority, with respect to any "employee benefit plan" of Borrower that has or could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any "employee benefit plan" of Borrower that has or could reasonably be expected to have a Material Adverse Effect.

Section 4. Affirmative Covenants.

4.1 Books and Records. Borrower will maintain proper books of account and records and enter therein complete and accurate entries and records of all of its transactions in accordance with GAAP and will give representatives of Bank access thereto at all reasonable times to discuss their affairs, finances and accounts, including permission to examine, copy and make abstracts from any such books and records and such other information which might be helpful to Bank in evaluating the status of the Loans as it may reasonably request from time to time. In furtherance thereof, Borrower hereby authorizes all of such Persons to discuss the same with representatives of the Bank at such times and as often as the Bank may reasonably request. Borrower will give Bank reasonable access to the Collateral and the other property securing the Obligations at reasonable times for the purpose of performing examinations thereof and to verify its condition or existence. If the Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, the Borrower, upon request of the Bank, shall notify such party to permit the Bank free access to such records at all reasonable times and to provide the Bank with copies of any records it may request, all at the Borrower's expense. Notwithstanding any of the foregoing, after the occurrence and during the continuance of an Event of Default, the Bank may do any of the foregoing as often as the Bank may desire at any time and without advance notice.

4.2 Financial Covenants. Guarantors will comply with all of the financial covenants and financial statement and reporting requirements (collectively, the "Financial Covenants") set forth in the Credit Agreement dated as of September 26, 2008 between Guarantors and Bank, as amended from time to time (the "Guarantors' Credit Agreement"), as though such Financial Covenants were fully set forth in this Agreement. If any of such Financial Covenants are modified or waived by the Bank, such modification or waiver shall constitute an amendment or waiver to this Agreement without any need for further documentation. If the Guarantors' Credit Agreement terminates or otherwise ceases to be in full force and effect, all of the Financial Covenants shall survive such termination and shall continue in effect as a part of this Agreement.

4.3 Condition and Repair. Borrower will maintain its assets in good repair and working order, ordinary wear and tear excepted and will make all appropriate repairs and replacements thereof.

4.4 Insurance. Borrower will insure its properties and business against loss or damage of the kinds and in the amounts customarily insured against by corporations with established reputations engaged in the same or similar business. All such policies will (a) be issued by financially sound and reputable insurers, (b) name Bank as an additional insured and, where applicable, as loss payee under a lender loss payable endorsement satisfactory to Bank, and (c) will provide for thirty (30) days written

notice to Bank before such policy is altered or canceled, all of which will be evidenced by a Certificate of Insurance delivered to Bank by Borrower on the Effective Date.

4.5 Taxes. Borrower will pay when due all taxes, assessments and other governmental charges imposed upon it or its assets, franchises, business, income or profits before any penalty or interest accrues thereon, and all claims (including, without limitation, claims for labor, services, materials and supplies) for sums which by law might be a lien or charge upon any of its assets, provided that (unless any material item or property would be lost, forfeited or materially damaged as a result thereof) no such charge or claim need be paid if it is being diligently contested in good faith, if Bank is notified in advance of such contest and if Borrower establishes an adequate reserve or other appropriate provision required by GAAP or deposits with Bank cash or bond in an amount acceptable to Bank.

4.6 Existence: Business. Borrower will (a) maintain its existence, (b) engage primarily in business of the same general character as that now conducted, and (c) refrain from entering into any lines of business substantially different from the business or activities in which Borrower is presently engaged.

4.7 Compliance with Laws. Borrower will comply with all federal, state and local laws, regulations and orders applicable to it or its assets including but not limited to all Environmental Laws, in all respects material to their businesses, assets or prospects, and will immediately notify Bank of any violation of any rule, regulation, statute, ordinance, order or law relating to the public health or the environment and of any complaint or notifications received by them regarding to any environmental or safety and health rule, regulation, statute, ordinance or law which may have a Material Adverse Effect.

4.8 Notice of Default. Borrower will, within three (3) Business Days of its knowledge thereof, give written notice to Bank of: (a) the occurrence of any Default or Event of Default and what action Borrower has taken or is taking or proposes to take in respect thereof, and (b) the occurrence of any event or the existence of any condition which would prohibit Borrower from continuing to make the representations set forth in this Agreement.

4.9 Depository/Banking Services. So long as this Agreement is in effect, Bank will be the sole depository in which all of Borrower's funds are deposited, and the sole bank of account of Borrower, and Borrower will grant Bank the first and last opportunity to provide any corporate banking services required by Borrower, including, without limitation, payroll, cash management and employee benefit plan services.

4.10 Other Amounts Deemed Loans. If Borrower fails to pay any tax, assessment, governmental charge or levy or to maintain insurance within the time permitted or required by this Agreement, or to discharge any Lien prohibited hereby, or to comply with any other obligation, Bank may, but shall not be obligated to, pay, satisfy, discharge or bond the same for the account of Borrower, and to the extent permitted by law and at the option of Bank, all monies so paid by Bank on behalf of Borrower will be deemed Loans and Obligations.

4.11 Payment of Liabilities. Except to the extent the validity or amount thereof is being contested in good faith and by appropriate proceedings with reserves maintained in amounts satisfactory to the Bank, the Borrower shall pay or discharge or cause to be paid or discharged: (i) on or prior to the date with due, all lawful claims of materialmen, mechanics, carriers, warehousemen, landlords and other like Persons that, if unpaid, might result in the creation of a Lien upon any property of the Borrower; (ii) on or prior to the date when due, all other lawful claims which, if unpaid, might result in the creation of a Lien upon any property of the Borrower; and (iii) all other current liabilities of the Borrower which are overdue more than sixty (60) days.

4.12 Further Assurances. Borrower shall provide such additional documents, and perform such additional acts, as the Bank may reasonably deem necessary to effectively carry out the purposes of, or to confirm this Agreement and the other Loan Documents, or to enable the Bank to enforce any of its rights hereunder or thereunder.

Section 5. Negative Covenants.

5.1 Indebtedness. Borrower will not incur, create, assume or permit to exist any Indebtedness other than the Indebtedness evidenced by this Agreement and any other Obligations to Bank.

5.2 Prepayments. Borrower will not voluntarily prepay any Indebtedness owing by them prior to the stated maturity date thereof, other than the Obligations.

5.3 Pledge or Encumbrance of Assets. Borrower will not create, incur, assume or permit to exist, arise or attach any Lien in any present or future asset, except for Permitted Liens.

5.4 Guarantees and Loans. Borrower will not enter into any direct or indirect guarantees other than by endorsement of checks for deposit in the ordinary course of business or make any advance or loan, other than loans and advances to employees of Borrower in the ordinary course of business.

5.5 Equity; Distributions; Management. Borrower will not issue any additional equity interests. Borrower will not (a) make any payments of any kind to its equity holders (including, without limitation, debt repayments, payments for goods or services or otherwise) other than (i) ordinary salary payments and expense reimbursements to equity holders employed by it and (ii) dividends or distributions if no Default or Event of Default has occurred or would result therefrom or (b) redeem or repurchase any ownership interests. Notwithstanding the foregoing, provided Borrower remains an S corporation, a partnership or a limited liability company, Borrower may make distributions to its shareholders, partners or members, as the case may be, in an amount equal to the federal and state income tax of such principals of the Borrower attributable to the earnings of the Borrower, as long as no Default or Event of Default has occurred under the terms of this Agreement and payment of the proposed distributions will not cause a Default or Event of Default. Borrower will not make or permit any Change in Control or change in its key management.

5.6 Merger or Purchase of Assets; Disposition of Assets. Borrower will not (a) change its capital structure, (b) merge or consolidate with any Person, including but not limited to Affiliates, (c) amend or change its organizational documents, (d) sell, transfer, lease, or otherwise dispose of (whether in one transaction or in a series of transactions) all or any substantial part of its assets, whether now owned or hereafter acquired, except for sales of inventory in the ordinary course of business, (e) purchase or acquire any assets from any Person other than in the ordinary course of business, or (f) dissolve, liquidate, reorganize, or adopt a plan of exchange as to its equity interests or permit itself to be the subject of an acquisition.

5.7 Transactions with Affiliates. Borrower will not (a) directly or indirectly issue any guarantee for the benefit of any of its Affiliates, (b) directly or indirectly make any loans or advances to or investments in any of its Affiliates, (c) enter into any transaction with any of its Affiliates, other than sales of inventory entered into on an arm's length basis in the ordinary course of their business, or (d) divert (or permit anyone to divert) any of its business opportunities to any Affiliate or any other corporate or business entity in which it or any holders of its equity interest holds a direct or indirect interest.

5.8 Investments. Borrower will not purchase or hold beneficially any stock, securities or evidence of indebtedness of, or make any investment or acquire any interest in, any other firm, partnership, corporation or entity, other than: (i) investments in Subsidiaries existing on the Effective Date; and (ii) short term investments in one or more of the following:

- (a) investments in direct obligations of the United States;
- (b) investments in certificates of deposit that are fully insured by the Federal Deposit Insurance Corporation and that are maintained with financial institutions organized and existing, or chartered or otherwise qualified to do business under the laws of the United States, and have capital in excess of \$25,000,000;
- (c) investments in commercial paper rated at least A-1 by S & P or P-1 by Moody's having a maturity not exceeding ninety (90) days; and
- (d) government obligations having a maturity not exceeding ninety (90) days;

5.9 Business and Accounting Changes. Borrower will not do any of the following, unless prior thereto, Borrower has given the Bank not less than fifteen (15) days prior written notice thereof and the Bank has consented to thereto: (i) change its company name as it appears in official filings in the state of their organization or the name under or by which it conducts its business, (ii) directly or indirectly engage in any business which would represent a material change from the business presently being conducted by it, (iii) discontinue any material part of the business presently being conducted by it, (iv) make any significant change in accounting treatment or reporting practices, except as required by GAAP, or change its fiscal year, (v) change its chief executive office, principal place of business, mailing address, corporate offices or warehouses or locations at which Collateral is held or stored, or the location of their records concerning the Collateral, (vi) change the type of entity that it is, (vii) change its organization identification number, if any, issued by its state of organization, or (viii) change its state of organization.

5.10 Off-Balance Sheet Liabilities; Sale and Leaseback Transactions. Borrower shall not have any off-balance sheet liabilities or engage in any sale and leaseback transactions.

Section 6. Events of Default and Remedies.

6.1 Events of Default. Any of the following events will be an Event of Default ("Event of Default"):

- (a) any representation or warranty made by Borrower herein, in any of the Loan Documents, or in any certificate or financial statement furnished to Bank in connection with this Agreement, is not correct in any material respect when made or reaffirmed; or
- (b) any default in the payment of any principal or interest or other monetary amount on any Obligation when due and payable, whether by acceleration or otherwise; or
- (c) Borrower or either Guarantor fails to observe or perform any covenant, condition or agreement herein or in any Loan Document and fail to cure such default within 30 days of the occurrence thereof, provided that such 30 day grace period will not apply to (i) a breach of any covenant which in Bank's good faith judgment is incapable of cure, (ii) any failure to maintain insurance or permit inspection of the Collateral or of the books and records of Borrower or either Guarantor in accordance with this Agreement, (iii) any

breach in any negative covenant set forth in Section 5 and/or Section 4.2 hereof, or (iv) any breach of any covenant which has already occurred; or

- (d) a court enters a decree or order for relief with respect to Borrower or either Guarantor in an involuntary case under any applicable bankruptcy, insolvency or other similar law then in effect, or appoints a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of Borrower or either Guarantor or for any substantial part of its property, or orders the wind-up or liquidation of its affairs; or a petition initiating an involuntary case under any such bankruptcy, insolvency or similar law is filed and is pending for thirty (30) days without dismissal; or
- (e) Borrower or either Guarantor commences a voluntary case under any applicable bankruptcy, insolvency or other similar law in effect, or makes any general assignment for the benefit of creditors, or fails generally to pay its debts as such debts become due, or takes corporate action in furtherance of any of the foregoing; or
- (f) Borrower defaults under the terms of any Indebtedness with a principal amount or amount payable on termination, as applicable, in excess of \$50,000.00 and such default gives any creditor or lessor the right to accelerate the maturity of any such Indebtedness; or
- (g) a default or event of default occurs under any Indebtedness of Borrower or either Guarantor to the Bank or any Bank Affiliate;
- (h) final judgment for the payment of money is rendered against Borrower in excess of \$50,000.00 and remains undischarged for 10 days during which execution is not effectively stayed; or
- (i) any event occurs which might, in Bank's reasonable opinion, have a Material Adverse Effect; or
- (j) the dissolution of Borrower or either Guarantor; or
- (k) the commencement of any foreclosure proceedings, proceedings in aid of execution, attachment actions, levies against, or the filing by any taxing authority of a lien against any of the Collateral or any property securing the repayment of any of the Obligations; or
- (l) the loss, theft or substantial damage to the Collateral or any property securing the repayment of the Obligations if the result of such occurrence will be, in Bank's reasonable judgment, the failure or inability of any Borrower to continue substantially normal operation of its business within thirty (30) days of the date of such occurrence; or
- (m) (i) the validity or effectiveness of any of the Loan Documents or its transfer, grant, pledge, mortgage, or assignment by the party executing such Loan Document is impaired; (ii) any party executing any of the Loan Documents asserts that any of such Loan Documents is not a legal, valid and binding obligation of the party thereto enforceable in accordance with its terms; (iii) the security interest or Lien purporting to be created by any of the Loan Documents will for any reason cease to be a valid, perfected first priority lien subject to no other liens other than Permitted Liens; or (iv) any Loan Document is amended, hypothecated, subordinated, terminated or discharged, or if any person is

released from any of its covenants or obligations under any of the Loan Documents except as permitted by Bank in writing; or

- (n) Bank in good faith deems itself insecure; or Bank has called for additional security and Borrower has not furnished such additional security on demand; or
- (o) a Reportable Event (as defined in ERISA) occurs with respect to any employee benefit plan maintained by any Borrower for its employees other than a Reportable Event caused solely by a decrease in employment; or a trustee is appointed by a United States District Court to administer any employee benefit plan; or the Pension Benefit Guaranty Corporation institutes proceedings to terminate any of Borrower's employee benefit plans; or
- (p) Except for Permitted Liens, the filing of any lien or charge against the Collateral or any part thereof which is not removed to the satisfaction of Bank within a period of 30 days thereafter;
- (q) nonpayment by Borrower of any Rate Management Obligation when due or the breach by the Borrower of any term, provision or condition contained in any Rate Management Agreement; or
- (r) either Guarantor denies its obligations to guaranty any Obligations then existing or attempts to limit or terminate its obligation to guaranty any future Obligations.

6.2 **Remedies.** If any Event of Default occurs, Bank may, in its sole discretion, (i) cease advancing money hereunder, (ii) declare all Obligations to be immediately due and payable, whereupon such Obligations will immediately become due and payable, (iii) exercise any and all rights and remedies provided by applicable law and the Loan Documents, (iv) proceed to realize upon the Collateral or any property securing the Obligations, including, without limitation, causing all or any part of the Collateral to be transferred or registered in its name or in the name of any other person, firm or corporation, with or without designation of the capacity of such nominee, all without presentment, demand, protest, or notice of any kind, each of which are hereby expressly waived by Borrower. Borrower shall be liable for any deficiency remaining after disposition of any Collateral, and waives all valuation and appraisal laws.

6.3 **Setoff.** If an Event of Default occurs, Bank is authorized, without notice to Borrower, to offset and apply to all or any part of the Obligations all moneys, credits and other property of any nature whatsoever of Borrower now or at any time hereafter in the possession of, in transit to or from, under the control or custody of, or on deposit with Bank (whether held by Borrower individually or jointly with another party), including but not limited to certificates of deposit.

6.4 **Default Rate.** After an Event of Default, all amounts of principal outstanding as of the date of such Event of Default will accrue interest at the Default Rate, in Bank's sole discretion, without notice to Borrower. This provision does not constitute a waiver of any Event of Default or an agreement by Bank to permit any late payments whatsoever.

6.5 **Late Payment Penalty.** If any payment of principal is not paid when due (whether at maturity, by acceleration or otherwise after the expiration of any applicable notice, grace and cure periods), Borrower agrees to pay to Bank a late payment fee equal to five percent (5%) of the payment amount then due.

6.6 No Remedy Exclusive. No remedy set forth herein is exclusive of any other available remedy or remedies, but each is cumulative and in addition to every other remedy available under this Agreement, the Loan Documents or as may be now or hereafter existing at law or in equity. Borrower waives any requirement of marshaling of assets.

6.7 Effect of Termination. The termination of this Agreement will not affect any rights of either party or any obligation of either party to the other, arising prior to the effective date of such termination, and the provisions hereof shall continue to be fully operative until all transactions entered into, rights created or Obligations incurred prior to such termination have been fully disposed of, concluded or liquidated. The security interest, lien and rights granted to Bank hereunder and under the Loan Documents will continue in full force and effect, notwithstanding the termination of this Agreement or the fact that no Loans are outstanding to Borrower, until all of the Obligations have been paid in full.

6.8 No Adequate Remedy at Law. Borrower recognizes that in the event Borrower fails to pay, perform, observe or discharge any of its Obligations under this Agreement, the Note or the other Loan Documents, no remedy at law will provide adequate relief to Bank and Borrower agrees that Bank shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving that it has incurred actual damages.

Section 7. Conditions Precedent.

7.1 Conditions to Initial Loans. Bank will have no obligation to make or advance any Loan until Borrower has delivered to Bank or established to Bank's satisfaction, or Bank has received, at or before the Effective Date, in form and substance satisfactory to Bank:

- (a) Executed Loan Documents.
- (b) The Note Processing Fee has been paid in full. In addition, Borrower will pay to Bank all out of pocket expenses incurred by Bank in connection with the preparation of this Agreement and accompanying documents and the consummation of the transactions contemplated hereby, including reasonable attorneys' fees.
- (c) Bank shall have completed to its reasonable satisfaction an audit of the books and records of Borrower, including the Collateral. It is understood, however, that any such audit by Bank will in no respect waive Bank's rights to pursue remedies upon an Event of Default.
- (d) A favorable opinion of counsel to Borrower.
- (e) Certificates and resolutions from Borrower, Guarantors and Pledgors.
- (f) Such additional information and materials as Bank may reasonably request.

7.2 Conditions to Loans. On the date of each Draw Loan, the following statements will be true:

- (a) All of the representations and warranties contained herein and in the Loan Documents will be correct in all material respects as though made on such date;
- (b) No event will have occurred and be continuing, or would result from such Loan, which constitutes a Default or an Event of Default;

The acceptance by Borrower of the proceeds of each Draw Loan will be deemed to constitute a representation and warranty by Borrower that the conditions in this Section 7.2 have been satisfied.

Section 8. Miscellaneous Provisions.

8.1 Miscellaneous. This Agreement, the Exhibits, the Schedules and the other Loan Documents are the complete agreement of the parties hereto and supersede all previous understandings relating to the subject matter hereof. This Agreement may be amended only in a writing signed by the party against whom enforcement of the amendment is sought. This Agreement may be executed in counterparts. If any part of this Agreement is held invalid, illegal or unenforceable, the remainder of this Agreement will not in any way be affected. This Agreement is and is intended to be a continuing agreement and will remain in full force and effect until the Loans are finally and irrevocably paid in full and terminated.

8.2 Waiver by Borrower. Borrower waives notice of non-payment, demand, presentment, protest or notice of protest of any Accounts or other Collateral, and all other notices (except those notices specifically provided for in this Agreement); consents to any renewals or extensions of time of payment thereof. Borrower hereby waives all defenses based upon suretyship or impairment of collateral, including but not limited to all defenses set forth in Section 3-605 of the UCC. Such waivers are entered into to the full extent permitted by Section 3-605(i) of the UCC.

8.3 Binding Effect. This Agreement will be binding upon and inure to the benefit of the respective legal representatives, successors and assigns of the parties hereto; provided, however, that Borrower may not assign or transfer any of their rights or delegate any of its Obligations under this Agreement or any of the Loan Documents, by operation of law or otherwise. Bank (and any subsequent assignee) may transfer and assign any of its rights or delegate any of its duties under this Agreement or may transfer or assign partial interests or participation in the Loans to other Persons. Bank may disclose to all prospective and actual assignees and participants all financial, business and other information about Borrower which Bank may possess at any time.

8.4 Security. The Obligations are secured as provided herein and in the Loan Documents and each other document or agreement which by its terms secures the repayment or performance of the Obligations.

8.5 Survival. All representations, warranties, covenants and agreements made by Borrower herein and in the Loan Documents will survive the execution and delivery of this Agreement, the Loan Documents and the issuance of the Note.

8.6 Delay or Omission. No delay or omission on the part of Bank in exercising any right, remedy or power arising from any Event of Default will impair any such right, remedy or power or any other right, remedy or power or be considered a waiver or any right, remedy or power or any Event of Default nor will the action or omission to act by Bank upon the occurrence of any Event of Default impair any right, remedy or power arising as a result thereof or affect any subsequent Event of Default of the same or different nature.

8.7 Notices. Any notices under or pursuant to this Agreement will be deemed duly sent when delivered in hand or when mailed by registered or certified mail, return receipt requested, addressed as follows:

To Borrower: 4700 Ashwood Drive, Suite 200
Cincinnati, Ohio 45241
Attention: Charles R. Stoltz

With a copy to: Joseph G. Tegreene, Esq.
Benesch, Friedlander, Coplan & Aronoff LLP
2300 BP Tower
200 Public Square
Cleveland, Ohio 44114-2378

To Bank: Fifth Third Bank
110 North Main Street
MD 332921
Dayton, Ohio 45402
Attention: Daniel Erlandson, VP

With a copy to: Fern Goldman, Esq.
Statman, Harris & Eyrich, LLC
3700 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202

Any party may change such address by sending written notice of the change to the other party.

8.9 No Partnership. Nothing contained herein or in any of the Loan Documents is intended to create or will be construed to create any partnership, joint venture or other relationship between Bank and Borrower other than as expressly set forth herein or therein and will not create any joint venture, partnership or other relationship.

8.10 Indemnification. If after receipt of any payment of all or part of the Obligations, Bank is for any reason compelled to surrender such payment to any person or entity, because such payment is determined to be void or voidable as a preference, impermissible setoff, or diversion of trust funds, or for any other reason, this Agreement will continue in full force and effect and Borrower will be liable to, and will indemnify, save and hold Bank, its officers, directors, attorneys, and employees harmless of and from the amount of such payment surrendered. The provisions of this Section will be and remain effective notwithstanding any contrary action which may have been taken by Bank in reliance on such payment, and any such contrary action so taken will be without prejudice to Bank's rights under this Agreement and will be deemed to have been conditioned upon such payment becoming final, indefeasible and irrevocable. In addition, Borrower will indemnify, defend, save and hold Bank, its officers, directors, attorneys, and employees harmless of, from and against all claims, demands, liabilities, judgments, losses, damages, costs and expenses, joint or several (including all accounting fees and attorneys' fees reasonably incurred), that Bank or any such indemnified party may incur arising out of this Agreement, any of the Loan Documents or any act taken by Bank hereunder except for the willful misconduct or gross negligence of such indemnified party. The provisions of this Section will survive the termination of this Agreement.

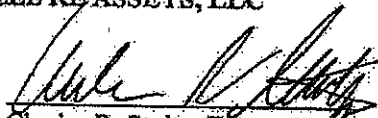
8.11 Governing Law; Jurisdiction. This Agreement and the other Loan Documents will be governed by the domestic laws of the State of Ohio. Borrower agrees that the state and federal courts in Montgomery County, Ohio, have exclusive jurisdiction over all matters arising out of this Agreement and the other Loan Documents, and that service of process in any such proceeding will be effective if mailed to Borrower at the address described in the Notices section of this Agreement; provided that nothing contained in this Agreement or the other Loan Documents will prevent Bank from bringing any action, enforcing any award or judgment or exercising any rights against Borrower, against any security or against any property of Borrower within any other county, state or other foreign or domestic jurisdiction. **BANK AND BORROWER HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

8.12 BORROWER AUTHORIZES ANY ATTORNEY OF RECORD TO APPEAR FOR IT IN ANY COURT OF RECORD IN THE STATE OF OHIO, AFTER THE OBLIGATIONS BECOME DUE AND PAYABLE, WHETHER BY THEIR TERMS OR UPON DEFAULT, WAIVE THE ISSUANCE AND SERVICE OF PROCESS, RELEASE ALL ERRORS AND RIGHTS OF APPEAL, AND CONFESS A JUDGMENT AGAINST IT IN FAVOR OF THE HOLDER OF SUCH OBLIGATION, FOR THE PRINCIPAL AMOUNT OF SUCH OBLIGATION PLUS INTEREST THEREON, TOGETHER WITH COURT COSTS AND ATTORNEYS' FEES. STAY OF EXECUTION AND ALL EXEMPTIONS ARE HEREBY WAIVED. BORROWER ALSO AGREES THAT THE ATTORNEY ACTING FOR BORROWER AS SET FORTH IN THIS PARAGRAPH MAY BE COMPENSATED BY BANK FOR SUCH SERVICES, AND BORROWER WAIVES ANY CONFLICT OF INTEREST CAUSED BY SUCH REPRESENTATION AND COMPENSATION ARRANGEMENT. IF AN OBLIGATION IS REFERRED TO AN ATTORNEY FOR COLLECTION, AND THE PAYMENT IS OBTAINED WITHOUT THE ENTRY OF A JUDGMENT, THE OBLIGORS WILL PAY TO THE HOLDER OF SUCH OBLIGATION ITS ATTORNEYS' FEES.

WARNING - BY SIGNING THIS PAPER, YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME, A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT OR ANY OTHER CAUSE.

LASALLE RE ASSETS, LLC

By:


Charles R. Stoltz, Treasurer

FIFTH THIRD BANK

By:


Daniel B. Erlandson, Vice President

**EXHIBITS
TO
CREDIT AGREEMENT
AMONG
LASALLE RE ASSETS, LLC
AND
FIFTH THIRD BANK**

Exhibit 1 - Definitions

EXHIBIT 1

DEFINITIONS

In addition to words and terms defined elsewhere in this Agreement, the following words and terms shall have the following meanings:

"Affiliate" means, as to Borrower, (a) any person or entity which, directly or indirectly, is in control of, is controlled by or is under common control with, Borrower, or (b) any person who is a director, officer or employee (i) of Borrower or (ii) of any person described in the preceding clause (a). For purposes of this definition, control of a person shall mean (a) the power, direct or indirect, (i) to vote ten percent (10%) or more of the securities, partnership interests or membership interests having ordinary voting power for the election of directors of such person or (ii) to direct or cause the direction of the management and policies of such person whether by contract or otherwise or (b) the ownership, direct or indirect, of ten percent (10%) or more of any class of equity securities of such person.

"Bank Affiliate" means Bank, Fifth Third Leasing Company, and every other entity of which Fifth Third Bancorp is the majority owner.

"Business Day" means any day on which U.S. Federal Reserve Bank is open in Cincinnati, Ohio for the transaction of its normal business, and if the applicable day relates to LIBOR matters, a day on which dealings in U.S. Dollar deposits are also carried on in the London interbank market and banks are open for business in London.

"Change in Control" means (a) the acquisition of ownership, directly or indirectly of equity interests representing more than 51% of the aggregate ordinary voting power represented by the issued and outstanding equity interests of any Borrower by parties other than those parties owning such equity interests on the Effective Date or (b) the acquisition of the power to direct or cause the direction of the management or policies of the Borrower, whether through the ability to exercise voting power, by contract or otherwise, by parties other than those parties controlling such Person on the Effective Date.

"Collateral" shall mean the cash and marketable securities pledged pursuant to the Pledge Agreements.

"Default" means an event which with notice or lapse of time would constitute an Event of Default.

"Default Rate" means six percent (6%) in excess of the interest rate otherwise in effect under amounts outstanding under the Note. In no event will the interest rate accruing under such Note be increased to be in excess of the maximum interest rate permitted by applicable state or federal usury laws then in effect.

"Draw Loans" shall have the meaning set forth in Section 2.1.

"Draw Note" shall have the meaning set forth in Section 2.1.

"Environmental Laws" means all federal, state, local and foreign laws relating to pollution or protection of the environment, including laws relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial toxic or hazardous substances or wastes into the environment (including without limitation ambient air, surface water, ground water or land), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes, and any and all regulations, codes, plans, orders, decrees, judgments, injunctions, notices or demand letters issued, entered promulgated or approved thereunder.

"ERISA" means the Federal Employee Retirement Income Security Act of 1974.

"Event(s) of Default" shall have the meaning set forth in Section 6.1.

"GAAP" means generally accepted accounting principles consistently applied.

"Guaranty" means the Continuing Guaranty Agreement of Guarantors for Obligations of Borrower to Bank.

"Guarantors" means, collectively, LaSalle Holdings, LLC, a Delaware limited liability company and Green Park Leasing Co., LLC, an Ohio limited liability company, and all other guarantors of the Obligations existing on the Effective Date or arising thereafter, jointly and severally.

"Indebtedness" means (a) any and all indebtedness, obligations or liabilities (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) for or in respect of: (i) borrowed money, (ii) amounts raised under or liabilities in respect of any note purchase or acceptance credit facility, (iii) reimbursement obligations (contingent or otherwise) under any letter of credit, currency swap agreement, interest rate swap, cap, collar or floor agreement or other interest rate management device, (iv) any other transaction (including forward sale or purchase agreements, capitalized leases and conditional sales agreements) having the commercial effect of a borrowing of money to finance operations or capital requirements (but not including trade payables and accrued expenses incurred in the ordinary course of business which are not represented by a promissory note or other evidence of indebtedness and which are not more than thirty (30) days past due), or (b) any guaranty by any Borrower of Indebtedness of others.

"Lien" means any security interest, mortgage, pledge, assignment, lien or other encumbrance of any kind, including interests of vendors or lessors under conditional sale contracts and capitalized leases.

"Loan Documents" means this Agreement, the Note, the Guaranty, the Pledge Agreements and every other document or agreement executed by any party in connection with this Agreement or the transactions contemplated hereby, or evidencing, guarantying or securing any of the Obligations, as amended or restated from time to time; and "Loan Document" means any one of the Loan Documents.

"Loans" means the Draw Loans.

"Material Adverse Effect" means a material adverse effect on (i) the business, assets, operations, condition (financial or otherwise) or prospects of any Borrower or (ii) the ability of any Borrower to pay the Obligations and perform its obligations under this Agreement or (iii) the ability of Bank to enforce any of its rights or to collect any of the Obligations then due and payable.

"Note" means the Draw Note.

"Obligation(s)" means all loans, advances, indebtedness, liabilities and obligations of each Borrower owed to Bank and any Bank Affiliate of every kind and description whether now existing or hereafter arising including without limitation, those owed by each Borrower to others and acquired by Bank or any Bank Affiliate, by purchase, assignment or otherwise, and whether direct or indirect, primary or as guarantor or surety, absolute or contingent, liquidated or unliquidated, matured or unmatured, whether or not secured by additional collateral, and including without limitation all liabilities, obligations and indebtedness arising under this Agreement, the Notes and the other Loan Documents, any and all Rate Management Obligations, all obligations to perform or forbear from performing acts, all amounts

represented by letters of credit now or hereafter issued by Bank for the benefit of or at the request of any Borrower, and all expenses and attorneys' fees incurred by Bank and any Bank Affiliate under this Agreement or any other document or instrument related to any of the foregoing.

"Permitted Liens" means (i) Liens to Bank, (ii) Liens existing on the Effective Date which have been disclosed in writing to and approved by Bank, and (iii) Liens imposed by law which secure amounts not yet due and payable.

"Person" means any individual, firm, partnership, joint venture, corporation, association, business enterprise, trust, governmental body or other entity, whether acting in an individual, fiduciary, or other capacity.

"Pledge Agreements" means (i) the Pledge Agreement (deposit account), dated June 28, 2005, by and between Health Care Holdings, LLC and Bank; (ii) the Pledge Agreement, dated November 14, 2006, by and between Health Care Holdings, LLC and Bank, and the related Account Control Agreement, dated November 14, 2006; (iii) the Pledge Agreement (deposit account), dated April 14, 2008, by and between HC Real Estate Holdings, LLC and Bank; and (iv) the Pledge Agreement, dated April 14, 2008, by and between HC Real Estate Holdings, LLC and Bank, and the related Account Control Agreement dated April 14, 2008, each as amended from time to time.

"Pledgors" means Health Care Holdings, LLC and HC Real Estate Holdings, LLC.

"Prime Rate" means the rate of interest per annum announced to be its prime rate from time to time by Bank at its principal office in Cincinnati, Ohio whether or not Bank will at times lend to borrowers at lower rates of interest or, if there is no such prime rate, then its base rate or such other rate as may be substituted by Bank for the prime rate.

"Principal Financial Officer" means the president, chief financial officer or treasurer of the Borrower.

"Rate Management Agreement" means any agreement, device or arrangement providing for payments which are related to fluctuations of interest rates, exchange rates, forward rates, or equity prices, including, but not limited to, dollar-denominated or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, puts and warrants, and any agreement pertaining to equity derivative transactions (e.g., equity or equity index swaps, options, caps, floors, collars and forwards), including without limitation any ISDA Master Agreement between Borrower and Bank or any affiliate of Fifth Third Bancorp, and any schedules, confirmations and documents and other confirming evidence between the parties confirming transactions thereunder, all whether now existing or hereafter arising, and in each case as amended, modified or supplemented from time to time.

"Rate Management Obligations" means any and all obligations of Borrower to Bank or any affiliate of Fifth Third Bancorp, whether absolute, contingent or otherwise and howsoever and whensoever (whether now or hereafter) created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under or in connection with (i) any and all Rate Management Agreements, and (ii) any and all cancellations, buy-backs, reversals, terminations or assignments of any Rate Management Agreement.

"Subsidiary" means any Person of which any Borrower directly or indirectly owns or controls at the time outstanding stock or other ownership interests having under ordinary circumstances (not depending on the happening of a contingency) voting power to elect a majority of the board of directors or comparable managing body (in the case of any Person which is not a corporation) of such Person.

"UCC" means the Uniform Commercial Code as in effect in the State of Ohio from time to time.

Escrow Agreement

Unpaid Construction Costs, Repairs
or Needs Assessment Repairs

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

Whereas, LaSalle RE Assets, LLC

is the mortgagor of a project located in St. Louis, Missouri, and

identified as Project Number 085-22028, which has been constructed, repaired, assessed from the proceeds of a mortgage
(or deed of trust) from Gershman Investment Corp, with

respect to which mortgage the Assistant Secretary - Federal Housing Commissioner has finally endorsed for insurance, and,

Whereas, the final endorsement is conditioned upon assurance that additional funds be made available for project purposes. These additional funds are for the payment of (check the appropriate box):

- A. ☐ Unpaid construction costs, resulting from the project during the period from initial endorsement (Start of Construction for Insurance Upon Completion cases) to the cut off date established for cost certification purposes (where cost certification is required).
- B. ☒ Non-critical repairs under Section 223(f),
- C. ☐ Non-critical Preservation Capital Needs Assessment (PCNA) repairs under Section 241(f), Title II or Title VI.

Now, Therefore, This Agreement Witnesses:

1. That the mortgagor has deposited with (name of Depository), Gershman Investment Corp.

located at (address) 7 N. Bemiston Ave
St. Louis, MO 63105

\$ See Exhibit A, receipt of which is hereby
acknowledged by the Depository, to be held and disbursed by the
Depository as herein set out.

2. ~~The escrow amount of unpaid, but completed construction costs~~
must equal the amount owed. In determining the amount of such
deposit, effect will be given to the mortgagor's outstanding
liabilities as reported on form HUD-2023, Request for Final
Endorsement of Credit Instrument or HUD-2455 (For Insurance
~~Upon Completion Projects Only~~); 120%

3. The repair and PCNA escrows must equal ~~100~~ percent of the cost
of uncompleted repairs, of which 100 percent must be in the form
of cash and 50 percent may be in cash or an acceptable letter of
credit issued by another banking institution and is unconditional
and irrevocable. The Depository shall be solely responsible for
any losses that may occur in connection with the call on the letter
of credit, accepted by the Depository for completion of repairs. If
demand under the letter of credit is not immediately met, the
depository will forthwith provide cash equivalent to the undrawn
balance thereunder without recourse to the mortgagor, any

*120% **20%
sponsor, the general contractor or the architect. The amount(s)
claimed for disbursement is subject to surcharge if funds have been
disbursed in a manner or for purposes not in compliance with the
intent. Of the ~~100~~ percent, ~~80%~~ must be retained until all the
repairs or PCNA work is completed.

4. The escrow shall be held subject to disbursement at the direction
of the Assistant Secretary-Commissioner for a period of
15 months following final endorsement of the
mortgage loan for insurance plus any additional period by which
payment of construction cost is estimated by the mortgagor to be
in dispute or under litigation.
5. Disbursements from the escrow may be authorized by the
Commissioner or Designee, utilizing form HUD-92464, Request
for Approval of Advance of Escrow Funds, to meet any estab-
lished cost for which the escrow deposit was intended. An
itemization of unpaid construction/repair costs must be included
as attachment "A" to this agreement.
6. The balance remaining in the escrow deposit will be subject to
immediate application to the mortgage debt in part or total in the
event that certification of the disbursements is not completed and
received within the time prescribed in paragraph 4 and the HUD
approved costs do not support the mortgage.
7. It is Further Understood And Agreed that the Depository will
hold and disburse this escrow at the sole direction of the Assistant
Secretary-Commissioner.

Name of Mortgagor:
LaSalle RE Assets, LLC

Name of Authorized Agent:
Charles R. Stoltz, Authorized Representative

Name of Depository:
Gershman Investment Corp.

Name of Authorized Agent:
Rick Sherman, V.P.

Signature & Title of Authorized Agent & Date: Charles R. Stoltz
Authorized Representative

X [Signature]
Signature & Title of Authorized Agent & Date: Rick Sherman, V.P.

U.S. Department of Housing
and Urban Development

X [Signature] 9/13/08
Signature & Title of Authorized Agent & Date:

EXHIBIT A

**Rider to Escrow Agreement
(Unpaid Construction Costs, Repairs or Needs Assessment Repairs)
Federal Housing Administration
LaSalle RE Assets, LLC
FHA Project No. 085-22028**

This Rider to the Escrow Agreement is attached to the Escrow Agreement for the above Project and is incorporated by reference and made a part of the Agreement.

In addition to the amount contained in the standard Reserve for Replacement Account described in Section 2(a) of the Regulatory Agreement, Owner shall make the following deposits:

1. The establishment of a Repair Escrow Account to provide additional funds necessary to complete within twelve (12) months the repair and improvements listed in paragraph 2 below which are not eligible for funding from the Replacement Reserve Account and an initial deposit into the Repair Escrow Account of \$1,851,115.20. The Repair Escrow Account shall be funded by deposit of cash or letter of credit (withheld from mortgage proceeds) in the amount of 100% of HUD's estimate of the cost of those repairs (\$1,537,596.00 non-critical repairs + \$5000.00 anticipated year 1 near term replacement reserve = \$1,542,596.00) and an additional deposit based on 20% of HUD's estimate of non-critical repairs (\$308,519.20), which will be funded by cash or letter of credit (the "Additional Deposit"). Upon completion of the repairs, the sum of 2½% of the actual repair cost shall be held from the Additional Deposit for a period of 15 months as a latent defect guarantee assurance.
2. Repairs to be completed within 12 months are as follows:
 - a. All non-critical 12 month repair items for the site and grounds, building exteriors, common areas, and building interiors set forth on the attachment to the Commitment To Insure Section 232 dated September 10, 2008 and attached hereto as Exhibit B.
 - b. The year one (1) Near Term Replacement Reserve attached hereto and is listed in Exhibit B.
3. Except as provided in paragraph 1 for funds held for latent defect guarantee assurance, upon completion of the repairs in paragraph 2.a and 2.b above, the Repair Escrow Account shall be closed and the remaining balance withheld from mortgage proceeds shall be transferred to the Reserve for Replacement Account. Any remaining balance attributable to the Additional Deposit shall be transferred to the Owner.

EXHIBIT B
(1 OF 2)

Termite infestation was not noted to be a potential problem at the subject property (no damages noted by Capital Consultants, Inc.). We recommend that a licensed termite inspector inspect all of the buildings.

IV. IMMEDIATE REPAIR NEEDS

A. Critical Repair Items- All health and safety deficiencies or violations of Section 8 housing quality standards or FHA's regulatory agreement standards that require immediate remediation.

- **Building Interiors**

- Provide pipe guards at all exposed vanity piping.
56 rooms x \$40 \$2,240
- Provide upgrades to current fire suppression system at commercial equipment to meet fire marshal requirements. (ESTIMATE) \$2,500

B. Non-Critical 12 Month Repair Items- An estimate of the repairs, replacements, and significant deferred and other maintenance items that should be addressed within 12 months of closing.

- **Site and Grounds**

- Patch areas of asphalt at various locations, seal and re-stripe.
3,307 s.y. +/- @ \$1.75/ s.y. = \$5,787

- **Building Exteriors**

- Patch E.I.F.S. column bases at entrance.
Quantity of 2 @ \$250 each = \$500
- Provide emergency generator.

(In Owner's Planned Scope of Work)

- **Building Interiors**

- Remove and replace knob hardware with lever hardware on all resident rooms where located.
- (In Owner's Planned Scope of Work)

C. Owner's Planned Scope of Work- See attached document that identifies Owner's Planned Scope of Work for various rooms and common area upgrades to be completed within 12 months of closing. The total costs for this scope of work are estimates prepared by the Owner. This is inclusive of work for both Green Park Nursing and Green Park Resident Center

\$1,518,510

D. Replacement Reserve First Year

- As a part of routine maintenance, jetting of the sanitary lines. \$2,500

Total Immediate Repair Needs \$1,532,037

EXHIBIT B
(2 OF 2)

Termite infestation was not noted to be a potential problem at the subject property (no damages noted by Capital Consultants, Inc.). We recommend that a licensed termite inspector inspect all of the buildings.

IV. IMMEDIATE REPAIR NEEDS

A. Critical Repair Items- All health and safety deficiencies or violations of Section 8 housing quality standards or FHA's regulatory agreement standards that require immediate remediation.

• **Building Interiors**

- Provide pipe guards at all exposed vanity piping.
79 rooms x \$40 \$3,160
- Provide upgrades to current fire suppression system at commercial equipment to meet fire marshal requirements. (ESTIMATE) \$2,500

B. Non-Critical 12 Month Repair Items- An estimate of the repairs, replacements, and significant deferred and other maintenance items that should be addressed within 12 months of closing.

• **Site and Grounds**

- Patch areas of asphalt at various locations, seal and re-stripe.
3,68 s.y. +/- @ \$1.75/ s.y. = \$5,719
- Re-build asphalt curbs at rear of building near trash enclosure.
20 l.f. +/- @ \$4.00/ l.f. = \$80

• **Building Exteriors**

- Provide emergency generator.

(In Owner's Planned Scope of Work)

• **Building Interiors**

- Remove and replace knob hardware with lever hardware on all resident rooms where located.

(In Owner's Planned Scope of Work)

C. Owner's Planned Scope of Work- See attached document that identifies Owner's Planned Scope of Work for various rooms and common area upgrades to be completed within 12 months of closing. The total costs for this scope of work are estimates prepared by the Owner. This is inclusive of work for both Green Park Nursing and Green Park Resident Center

\$7,000

D. Replacement Reserve First Year

- As a part of routine maintenance, jetting of the sanitary lines. \$2,500

Total Immediate Repair Needs **\$20,959**